

83
Nos. 15728 and 15731

In the United States Court of Appeals
for the Ninth Circuit

BERNARD BLOCH, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITIONS FOR REVIEW OF THE ORDERS OF THE TAX
COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

JOHN N. STULL,
Acting Assistant Attorney General.

LEE A. JACKSON,
CHARLES B. E. FREEMAN,
Attorneys,
Department of Justice,
Washington 25, D. C.

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BRIEF FOR THE RESPONDENT

OPINION BELOW

The Tax Court did not render an opinion.

JURISDICTION

This proceeding involves federal income taxes for the taxable years 1947, 1948, 1952 and 1953. On November 6, 1956, the Commissioner sent to taxpayer by registered mail a notice of deficiency for the years 1952 and 1953 stating a deficiency in the amount of \$4,907.17 plus penalties totaling \$1,811.56. On February 11, 1957, taxpayer filed a petition for redetermination of that deficiency under the provisions of Section 272 (a)(1) of the Internal Revenue Code of 1939¹ and

¹ Section 272(a)(1) Internal Revenue Code of 1939 is applicable because Section 7851(a)(6), Internal Revenue Code of 1954 (Appendix, *infra*) continues the notice of deficiency and petition to the Tax Court procedures of Section 272(a)(1) with respect to taxes imposed by the 1939 Code with the exception of treating timely mailing as timely filing whenever Section 7502 of the 1954 Code applies. Section 6213(a), Internal Revenue Code of 1954 is substantially the same as Section 272(a)(1).

Section 7502(a) of the Internal Revenue Code of 1954. On January 8, 1957, the Commissioner sent to taxpayer by registered mail a notice of deficiency for the taxable years 1947 and 1948 stating a deficiency in the amount of \$8,695.65 plus penalties of \$4,347.83. On April 12, 1957, taxpayer filed a petition for redetermination of that deficiency under the provisions of Section 272 (a)(1) of the Internal Revenue Code of 1939 and Section 7502(a) of the Internal Revenue Code of 1954. The order of the Tax Court dismissing the first petition was entered on May 3, 1957. The petition for rehearing was denied on May 24, 1957. The order of the Tax Court dismissing the second petition was entered on July 3, 1957. The case is brought to this Court on timely petitions for review filed on July 30, 1957, and September 3, 1957. Jurisdiction is conferred on this Court by Section 7482, Internal Revenue Code of 1954.

QUESTION PRESENTED

Whether filing a petition for redetermination is deemed timely, under Section 272(a)(1), Internal Revenue Code of 1939 and Section 7502(a), Internal Revenue Code of 1954, when the petition is mailed but the United States postmark date on the envelope containing the petition is not within the 90-day period prescribed by Section 272(a)(1) for filing a petition for redetermination.

STATUTES INVOLVED

The pertinent provisions of the statutes involved may be found in the Appendix, *infra*.

STATEMENT

This appeal involves two consolidated cases. The basic factual pattern is that the Commissioner sent a

notice of deficiency by registered mail to the taxpayer who was then incarcerated in the Federal Correctional Institution, Terminal Island, San Pedro, California. The petition for redetermination in each instance was received by the Tax Court more than 90 days after the date the notice of deficiency was mailed. The Tax Court dismissed each petition for lack of jurisdiction.

The notice of deficiency pertaining to the years 1952 and 1953 was sent by registered mail to taxpayer on November 6, 1956, addressed to taxpayer at his then correct address of Terminal Island, Correctional Institute, San Pedro, California. Taxpayer's petition for redetermination (hereinafter referred to as first petition) was received and filed by the Tax Court on February 11, 1957, the 97th day after the notice of deficiency was mailed. The 90th day, February 4, 1957, was neither a Saturday, Sunday nor legal holiday. The United States postmark on the envelope containing the first petition was illegible. The letter transmitting the first petition was dated February 5, 1957, the 91st day after the notice of deficiency was mailed. The warden, Mr. P. G. Smith, stated in a letter dated June 5, 1957, and addressed to the Clerk of the Tax Court that the first petition had been placed in the hands of taxpayer's case worker on Friday, February 1, 1957, but it was not possible to get the cover letter dictated and typed until Tuesday, February 5, 1957.

The notice of deficiency pertaining to the taxable years 1947 and 1948 was sent to taxpayer by registered mail on January 8, 1957, addressed to taxpayer at his then correct address of Federal Correctional Institution, Terminal Island, California. Taxpayer's petition for redetermination (hereinafter referred to as second

petition) was mailed in San Pedro, California. The postmark date on the envelope containing the second petition was April 9, 1957, the 91st day after the mailing of the notice of deficiency. The 90th day, April 8, 1957, was neither a Saturday, Sunday nor legal holiday. The petition was received and filed by the Tax Court on April 12, 1957, the 94th day after the mailing of the notice of deficiency. Mr. T. R. Kildall, Chief Classification & Parole, in a letter dated June 19, 1957, to the Clerk of the Tax Court stated that taxpayer's file indicated that five copies of a paper titled "Petition" were forwarded to the Tax Court on March 25, 1957, and five copies of a petition were forwarded to the Clerk on April 8, 1957.

In each instance, the Commissioner moved to dismiss on the ground that the Tax Court lacked jurisdiction since the petitions for redetermination had not been filed within the prescribed 90-day period nor did a postmark indicate that either petition had been mailed within the prescribed 90-day period. In each instance, the Tax Court granted the Commissioner's motion.

SUMMARY OF ARGUMENT

In order for the Tax Court to acquire jurisdiction a petition for redetermination must be filed with that court within 90 days after a notice of deficiency is mailed. To file a petition with the Tax Court means actual delivery of the petition to the Tax Court. The first petition in this case was delivered to the Tax Court on the 97th day after the notice of deficiency was mailed and the second petition was delivered on the 94th day. Therefore, the petitions were not filed within the prescribed 90-day period.

The undisputed facts show that Section 7502(a) is inapplicable. That section specifically provides that it shall apply only if the postmarked date stamped on the envelope containing the petition falls on or before the prescribed date for filing. The postmark on the envelope containing the first petition was illegible, however, the letter transmitting that petition was dated February 5, 1957, the 91st day after the notice of deficiency was mailed. The postmark date on the envelope containing the second petition was April 9, 1957, the 91st day after the notice of deficiency was mailed. In each instance, the dates are one day after the expiration of the prescribed 90-day period for filing.

The presumption of delivery in the ordinary course of the mail cannot operate here to aid taxpayer because the facts show that the petition could not have been actually delivered within the 90-day period.

Taxpayer's argument concerning procedure and the constitutional objections raised are without merit and it is clear that taxpayer received the notices of deficiency in ample time for filing the petition for redetermination within the prescribed 90 days. Accordingly, the Tax Court correctly dismissed the petition for redetermination for lack of jurisdiction.

ARGUMENT

The Tax Court Correctly Dismissed the Petitions for Redetermination for Lack of Jurisdiction Because the Petitions Were Not Timely Filed in Accordance with the Provisions of Section 272(a)(1) of the 1939 Code as Modified by Section 7502(a) of the 1954 Code

When a deficiency is asserted by the Commissioner, taxpayer may seek a redetermination by filing a petition with the Tax Court. Section 272(a)(1) of the

Internal Revenue Code of 1939 (Appendix, *infra*). The petition must be filed within 90 days after the date a notice of deficiency is mailed. Section 272(a)(1). As this Court stated in *Di Prospero v. Commissioner*, 176 F. 2d 76, 77 :

There is, at this late date, little doubt that the 90 day requirement is jurisdictional.

This Court recently approved the *Di Prospero* case in *Jorgensen v. Commissioner*, 246 F. 2d 536. There must be strict compliance with the statutory jurisdictional requirements (*Stebbins' Estate v. Helvering*, 121 F. 2d 892 (C.A. D.C.)), and, no matter how apparently inequitable the situation, there is no authority "to relieve the taxpayer from the clear jurisdictional requirements of the law" (*Rich v. Commissioner*, 250 F. 2d 170, 175 (C.A. 5th)). Thus, the Tax Court did not acquire jurisdiction to redetermine the deficiencies unless the petitions were filed within the prescribed 90-day period. *Di Prospero v. Commissioner*, *supra*; *Jorgensen v. Commissioner*, *supra*; *Rich v. Commissioner*, 250 F. 2d 170 (C.A. 5th).²

To file a petition with the Tax Court pursuant to Section 272(a)(1) means actual delivery of the petition

² Accord: *Mindell v. Commissioner*, 200 F. 2d 38 (C.A. 2d); *Galvin v. Commissioner* 239 F. 2d 166 (C.A. 2d); *Underwriters Inc. v. Commissioner* 215 F. 2d 953 (C.A. 3d); *Lingham-Pritchard v. Commissioner*, 242 F. 2d 750 (C.A. 3d), certiorari denied 355 U.S. 846, rehearing denied, 355 U.S. 886; *Kiker v. Commissioner*, 218 F. 2d 389 (C.A. 4th); *Poynor v. Commissioner*, 81 F. 2d 521 (C.A. 5th); *Worthington v. Commissioner* 211 F. 2d 131 (C.A. 6th); *Eppler v. Commissioner* 188 F. 2d 95 (C.A. 7th); *Ryan v. Alexander* 118 F. 2d 744 (C.A. 10th); *Teel v. Commissioner*, 248 F. 2d 749 (C.A. 10th); *Lewis-Hall Iron Works v. Blair*, 23 F. 2d 972 (C.A.D.C.), certiorari denied 277 U.S. 592.

to the Tax Court within the prescribed 90 days.³ *Di Prospero v. Commissioner, supra*; *Jorgensen v. Commissioner, supra*; *Rich v. Commissioner, supra*; *Poy-nor v. Commissioner*, 81 F. 2d 521 (C.A. 5th). Neither petition in this case was actually delivered to the Tax Court within the 90-day period after the notice of deficiency was mailed. The first petition was actually delivered to the Tax Court on February 11, 1957, the 97th day after the notice of deficiency was mailed. The second petition was actually delivered to the Tax Court on April 12, 1957, the 94th day after the notice of deficiency was mailed. The petitions, therefore, were not timely filed in accordance with the actual delivery requirement of Section 272(a)(1). *Di Prospero v. Commissioner, supra*; *Jorgensen v. Commissioner, supra*; *Rich v. Commissioner, supra*; *Worthington v. Commissioner*, 211 F. 2d 131 (C.A. 6th); *Galvin v. Commissioner*, 239 F. 2d 166 (C.A. 2d), and *Lingham-Pritchard v. Commissioner*, 242 F. 2d 750 (C.A. 3d), certiorari denied, 355 U.S. 846, rehearing denied, 355 U.S. 886.

Section 7502(a) of the Internal Revenue Code of 1954⁴ (Appendix, *infra*) temporizes the requirement of actual delivery. However, the section states:

This subsection shall apply only if the postmark date falls within the prescribed period or on or

³ Mailing the petition is neither delivery nor filing. *Lewis-Hall Iron Works v. Blair*, 23 F. 2d 972 (C.A.D.C.), certiorari denied, 277 U.S. 592.

⁴ Section 7502(a) of the 1954 Code is effective even as to taxes imposed by the 1939 Code so long as the mailing, as here, occurred after August 16, 1954. Section 7851(a)(6)(C) and (b) (Appendix, *infra*).

before the prescribed date for the filing of the claim, statement, or other document, * * *

Neither petition here was postmarked before the expiration of the prescribed 90-day period. The cover containing the first petition bore an illegible postmark⁵ but the letter transmitting the petition was dated February 5, 1957. It is reasonable to assume that the petition was not mailed before the date of the letter of transmittal which date was the 91st day after the notice of deficiency was mailed. The cover containing the second petition bore the postmark date of April 9, 1957, which was the 91st day after the notice of deficiency was mailed. Therefore, since neither petition was postmarked within the prescribed 90-day period, Section 7502(a) does not apply. Section 7502(a); *Jorgensen v. Commissioner, supra*; *Galvin v. Commissioner, supra*; *Lingham-Pritchard v. Commissioner, supra*; *Rich v. Commissioner, supra*.

The Tax Court's dismissals were consistent with its previous dismissals in *Galvin v. Commissioner, supra*; *Lingham-Pritchard v. Commissioner, supra*; *Jorgensen v. Commissioner, supra*, and *Rich v. Commissioner, supra*. These dismissals were affirmed by the Second, Third, Ninth and Fifth Circuits, respectively.

In the closely analogous *Rich* case, taxpayer was a prisoner in the Federal Penitentiary, Danbury, Con-

⁵ Taxpayer does not rely upon the postmark date on the cover containing the first petition. Furthermore, he cannot rely on the postmark since it is illegible and does not show the date of mailing. Section 7502 does not permit the consideration of other evidence as to the mailing date. *Madison v. Commissioner*, 28 T.C. — No. 154. The date of the letter accompanying the first petition, February 5, 1957, indicates, persuasively, however, that the petition was mailed after the 90-day period.

necticut. The notice of deficiency was addressed to taxpayer at the penitentiary and was mailed by the Commissioner on February 15, 1956. One hundred and eleven days later, on June 5, 1956, the petition for redetermination was received and filed by the Tax Court. During the interim, taxpayer's attorney had prepared the petition and sent it to taxpayer at the penitentiary. The attorney sent the filing fee to the Tax Court in a letter dated May 5, 1957, stating that the petition would be mailed to the Tax Court. On May 3, 1957, seventy-eight days after the notice of deficiency was mailed, taxpayer requested the prison official in charge of the mail room to send the petition by registered mail to the Tax Court and taxpayer paid the postage. The petition was not mailed until June 4, 1957. The Court of Appeals for the Fifth Circuit stated that all of the equities were with taxpayer but (250 F. 2d 170, 175):⁶

⁶ The court also decided that the letter sent to the Tax Court by the attorney was not intended as a petition, that the Commissioner had not appointed the warden as his agent and that taxpayer was not entitled to 150 days under Section 6213(a), 1954 Code.

The dissenting opinion expresses the view that Congress did not intend the result which the majority decided in the *Rich* case. The dissenting view was based upon the logic of statutory construction there expressed. Nothing was cited, however, in support of the Congressional intent there believed. We submit that Section 7502 demonstrates Congress' choice and plainly delimits the intended relaxation of the prior strict delivery requirement. Subsection 7502(a) does not permit an extension of the 90-day period predicated upon either hardship or equity. See 2 House Hearings before the Committee on Ways and Means, 83d Cong., 1st Sess., General Revision of the Internal Revenue Code, pp. 1344, 1358; Senate Hearings before Committee on Finance, 83d Cong., 1st Sess., Revision of the Internal Revenue Laws, pp. 482, 1325, 2283; H. Rep. No. 1337, 83d Cong., 2d Sess., p. 434 (3 U.S.C. Cong. & Adm. News (1954) 4017, 4583); S. Rep. No. 1622, 83d Cong., 2d Sess., p. 615 (3 U.S.C. Cong. & Adm. News (1954) 4621, 5266).

The law seems to be well settled that, in the absence of specific statutory provisions, imprisonment of a person who might otherwise become a petitioner or plaintiff will not toll in his favor a statute of limitations. 54 C.J.S. Limitations of Actions § 241; 34 Am. Jur., Limitation of Actions, § 214; Annotation 24 A.L.R. 2d 611, 619. See also, *Price v. Johnston*, 1948, 334 U.S. 266, 285, 68 S. Ct. 1049, 92 L. Ed. 1356; *Tabor v. Hardwick*, 5 Cir., 1955, 224 F. 2d 526, 528.

As shown by the authorities cited by the respondent (footnote 3, *supra*), the ninety day period is more than a period of limitation, and the courts have consistently held the prescribed period to be jurisdictional. Judge Walker for our Circuit made a good statement of the rule in *Poynor v. Commissioner*, 5 Cir., 81 F. 2d 521, 522:

* * * A paper is filed when it is delivered to the proper official and by him received to be kept on file. Depositing a paper in the post office in time for it to reach the Board of Tax Appeals in the usual course of mail within the time allowed is not a filing of the paper with the Board. *United States v. Lombardo*, 241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897. The Board was without power to dispense on equitable grounds with the requirement of filing within the time allowed. *Yturbide's Executors & Heirs v. United States*, 22 How. 290, 16 L. Ed. 342. See, also, *Muckelroy v. Baldwin*, [8 Cir.] 70 F. 2d 728.

The presumption of delivery in the ordinary course of the mail which was applied in *Arkansas Motor*

Coaches v. Commissioner, 198 F. 2d 189 (C.A. 8th), and *Central Paper Co. v. Commissioner*, 199 F. 2d 902 (C.A. 6th), cannot operate to aid taxpayer. In the *Arkansas Motor Coaches* case, the postmark was dated January 30, 1951, the 84th day after the notice of deficiency was mailed. The petition would have been received in Washington, D. C., in the ordinary course of the mail, on January 31, 1951, the 85th day. In the *Central Paper Co.* case, the postmark was dated December 1, 1950, the 86th day after the notice of deficiency was mailed. The petition would have been received in Washington, D. C., in the ordinary course of the mail, on December 2, 1950, the 87th day. Here, the first petition was not mailed before February 5, 1957, the 91st day after the notice of deficiency was mailed and the second petition's postmark date was April 9, 1957, the 91st day after the notice of deficiency was mailed. Obviously, in neither instance is the presumption apposite.⁷ The Sixth Circuit, which decided the *Central Paper Co.* case, held that the presumption was not applicable in *Gradsky v. Commissioner*, 218 F. 2d 703, and likewise, the Fourth Circuit held in *Kiker v. Commissioner*, 218 F. 2d 389 (C.A. 4th).

Taxpayer seems to argue that the Tax Court's dismissals denied him of due process and a hearing guar-

⁷ Taxpayer claims that he had no control over the mail and that the late filing was due to the negligence of another government agency. (Br. 13-14.) By selecting the method employed, we submit that taxpayer constituted the prison officials his agents. Any delay in placing the petition in the United States mails, therefore, was attributable to taxpayer, as principal. Accord: *McCord v. Commissioner*, 123 F. 2d 164 (C.A. D.C.). Clearly, the prison officials are not a part of the United States Post Office Department nor are such officials a part of the Tax Court of the United States. See *Rich v. Commissioner*, *supra*.

anted by the Fifth and Fourteenth Amendments to the Constitution of the United States. (Br. 9-12.) It is the congressional prerogative to provide and limit remedies for an aggrieved taxpayer. See *Bull v. United States*, 295 U.S. 247; *Brushaber v. Union Pac. R. R.*, 240 U.S. 1; *Federal Grain Co. v. United States*, 35 F. 2d 260 (W.D. Mo.); *Vance v. Vance*, 108 U.S. 514. Congress has established the Tax Court of the United States as an independent agency in the Executive Branch of the Government and has limited the time within which a proceeding may be initiated. Sections 7441 (Appendix, *infra*), and 6213(a), Internal Revenue Code of 1954. The Tax Court is a tribunal with jurisdiction limited in the manner prescribed by statute. Section 7442, Internal Revenue Code of 1954 (Appendix, *infra*); *Lasky v. Commissioner*, 352 U.S. 1027; *R. Simpson & Co. v. Commissioner*, 321 U.S. 225; *Commissioner v. Gooch Milling & Elevator Co.*, 320 U.S. 418; *Helvering v. Northern Coal Co.*, 293 U.S. 191. And, a basic tenet of our system of jurisprudence is that an aggrieved party's remedy may be barred, in any case, upon the expiration of the period of limitations within which a remedy might have been pursued. 2 Cooley, *Constitutional Limitations*, pp. 760-765 (8th ed., 1927); *Restatement of Judgments* (1942), Sections 47(e), 49(a). Insofar as a hearing in the Tax Court is concerned, plainly there is no basis for the contention that such remedy has been made arbitrarily inadequate. At any rate, taxpayer's claim that the Constitution has been violated is patently without merit since a proceeding in the Tax Court is not taxpayer's single

recourse.⁸ See Sections 322(b)(1) and 3772(a)(2) of the 1939 Code and Section 7422(a) of the 1954 Code allowing taxpayer to pay the tax, claim and sue for a refund. See also 28 U.S.C., Sections 1346(a) and 1491. It cannot be correctly stated that the failure to have a hearing in the Tax Court is a denial of a day in court. See Br. 13-14.

Taxpayer admits that he actually received the first notice of deficiency on the same day it was mailed and the second notice of deficiency "on or about" the same day it was mailed. (Br. 5, 7.) He had ample time for filing the petition for redetermination within the prescribed 90 days and thereby obtain a hearing and redetermination by the Tax Court. See *Teel v. Commissioner*, 248 F. 2d 749 (C.A. 10th); *Dolezilek v. Commissioner*, 212 F. 2d 458 (C.A. D.C.).

In reality, taxpayer's situation here is no different from that of any other taxpayer who failed to file his petition for redetermination within the 90 days, though he may have done all that he, individually, could once the petition was prepared for delivery. Could it be doubted that taxpayer, individually, had done all that he could in *Poynor v. Commissioner, supra*, where the petition was dispatched by airmail but the delay was caused by adverse weather conditions or in *Stebbins' Estate v. Commissioner, supra*, where the petition was dispatched by airmail but because of weather condi-

⁸ We might point out, in this connection, that taxpayer's situation is unlike that in *Arkansas Motor Coaches Co. v. Commissioner, supra*; *Central Paper Co. v. Commissioner, supra*; *Detroit Automotive P. Corp. v. Commissioner*, 203 F. 2d 785 (C.A. 6th); and *George Kemp Real Estate Co. v. Commissioner*, 182 F. 2d 847 (C.A. 2d). In each of those cases, involving special relief from excess profits taxes, the taxpayer's *only* remedy was that attempted in the Tax Court. Sections 722 and 732, Internal Revenue Code of 1939.

tions the petition was transferred to the railroad or in *Di Prospero v. Commissioner, supra*, where the petition was dispatched by airmail special delivery but the special delivery messenger arrived at the Tax Court after its closing time? In all of these cases, the Courts of Appeals affirmed the Tax Court's dismissal of the petition for lack of jurisdiction. Many situations could be conceived in which an unfortunate delay prevented compliance with the filing requirement. But, the *single* ameliorative provision pertinent here is Section 7502 (a) which permits considering *only* the postmark date as the date of delivery. That date here was not within the prescribed 90-day period. Consequently, the Tax Court had no alternative except to dismiss the petitions.⁹

⁹ The notices of deficiency were sent to taxpayer within the applicable period of limitations on assessments. For the years 1947 and 1948, the assessment can be made at any time because of fraud. For the taxable year 1952, taxpayer executed a waiver extending the limitation on assessment to June 30, 1957. For the taxable year 1953, the limitation on assessment was April, 1957. The notice of deficiency covering the years 1952 and 1953 was mailed to taxpayer on November 6, 1956.

CONCLUSION

The absence of timely filing prevented the Tax Court from acquiring jurisdiction. Therefore, taxpayer's petition was properly dismissed and the order of the Tax Court should be affirmed.

Respectfully submitted,

JOHN N. STULL,

Acting Assistant Attorney General.

LEE A. JACKSON,

CHARLES B. E. FREEMAN,

Attorneys,

Department of Justice,

Washington 25, D. C.

FEBRUARY, 1958.

APPENDIX

Internal Revenue Code of 1939:

SEC. 272. PROCEDURE IN GENERAL.

(a)(1) [As amended by Sec. 203 of the Act of December 29, 1945, c. 652, 59 Stat. 669] *Petition to Board of Tax Appeals.*—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 272.)

Internal Revenue Code of 1954:

SEC. 7441. STATUS.

The Board of Tax Appeals shall be continued as an independent agency in the Executive Branch of the Government, and shall be known as the Tax Court of the United States. The members thereof

shall be known as the chief judge and the judges of the Tax Court.

(26 U.S.C. 1952 ed., Supp. II, Sec. 7441.)

SEC. 7442. JURISDICTION.

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

(26 U.S.C. 1952 ed., Supp. II, Sec. 7442.)

SEC. 7502. TIMELY MAILING TREATED AS TIMELY FILING.

(a) *General Rule.*—If any claim, statement, or other document (other than a return or other document required under authority of chapter 61), required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such claim, statement, or other document is required to be filed, the date of the United States postmark stamped on the cover in which such claim, statement, or other document is mailed shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the claim, statement, or other document, determined with regard to any extension granted for such filing, and only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States in an envelope or other appropri-

ate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

(b) *Stamp Machine*.—This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.

(c) *Registered Mail*.—If any such claim, statement, or other document is sent by United States registered mail, such registration shall be prima facie evidence that the claim, statement, or other document was delivered to the agency, office, or officer to which addressed, and the date of registration shall be deemed the postmark date.

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(26 U.S.C. 1952 ed., Supp. II, Sec. 7502.)

SEC. 7851. APPLICABILITY OF REVENUE LAWS.

(a) *General Rules*.—Except as otherwise provided in any section of this title—

* * * * *

(6) *Subtitle F*.—

(A) *General Rule*.—The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) *Assessment, Collection, and Refunds*.—Notwithstanding the provisions of subpara-

graph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36 and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), * * *

(C) *Taxes Imposed Under the 1939 Code.*—After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

* * * * *

(iv) Chapter 76, relating to judicial proceedings.

(v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

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(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

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(7) *Other provisions.*—If the effective date of any provision of the Internal Revenue Code of 1954 is not otherwise provided in this section or in any other section of this title, such provision shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

(b) *Effect of Repeal of Internal Revenue Code of 1939.*—

(1) *Existing rights and liabilities.*—The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

* * * * *

(d) *Periods of Limitation.*—All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for

causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

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(26 U.S.C. 1952 ed., Supp. II, Sec. 7851.)

